

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

PATRICK RYAN GRANDE,

Case No. 18-CV-2904-ECT-KMM

Plaintiff,

v.

REPORT AND RECOMMENDATION

STATE OF MN,
EMILY PIPER JOHNSON,
GOVERNOR MARK DAYTON,
AMFSSCME COUNCIL 5,
DR. THOMAS GRATZER,
DR. WILLIAM ERICSON,
DR. MICHAEL FARNSWORTH,
DR. STANLEY SHAPIRO,

Defendants.

On December 14, 2018, this Court issued a report and recommendation observing that the relief Mr. Grande seeks in this proceeding is unclear. The undersigned observed that Mr. Grande could challenge the fact of his confinement in a habeas petition, but challenges to the conditions of his confinement would need to be litigated in a civil lawsuit. The Court recommended that Mr. Grande's complaint be dismissed without prejudice and with leave to file an amended complaint within 30 days. The District Court adopted the undersigned's report and recommendation in an Order dated January 9, 2019. (ECF No. 9.) The District Court's Order required Mr. Grande to file any amended complaint on or before February 8, 2019 and stated "[a] failure to comply may result in dismissal of this action pursuant to Fed. R. Civ. P. 41(b)." (*Id.*)

On January 9, 2019, the Court received a letter from Mr. Grande addressed to the undersigned that states: “I wish to plea for my liberty as it has been restrained for 26 years....” (ECF No. 10.) Mr. Grande has not filed an amended complaint, and his letter suggests that he seeks a form of relief that could only be granted through a writ of habeas corpus.

Based on the foregoing, the Court concludes that this case should be dismissed without prejudice for failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b). Mr. Grande did not file an amended complaint on or before February 8, 2019, and his January 9, 2019 correspondence suggests that he does not intend to prosecute a civil action challenging the conditions of his confinement. This conclusion should not be read to prevent Mr. Grande from filing a new action either clearly seeking habeas relief or separately raising only challenges to the conditions of his confinement. Accordingly, **IT IS HEREBY RECOMMENDED THAT** Plaintiff’s Complaint (ECF No. 1) should be **DISMISSED WITHOUT PREJUDICE** for failure to prosecute pursuant to Fed. R. Civ. P. 41(b).

Date: April 1, 2019

s/Katherine Menendez

Katherine Menendez
United States Magistrate Judge

NOTICE

Filing Objections: This Report and Recommendation is not an order or judgment of the District Court and is therefore not appealable directly to the Eighth Circuit Court of Appeals.

Under Local Rule 72.2(b)(1), “a party may file and serve specific written objections to a magistrate judge’s proposed finding and recommendations within 14 days after being served a copy” of the Report and Recommendation. A party may respond to those objections within 14 days after being served a copy of the objections. *See* Local Rule 72.2(b)(2). All objections and responses must comply with the word or line limits set forth in Local Rule 72.2(c).